

INTRODUCTION OF THE RAIL MERGER REFORM AND CUSTOMER PROTECTION ACT

HON. EARL POMEROY

OF NORTH DAKOTA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 22, 2000

Mr. POMEROY. Mr. Speaker, I am pleased to introduce the Rail Merger Reform and Customer Protection Act. This legislation would extend the reach of the antitrust laws to the railroad industry while providing the Surface Transportation Board (STB) with additional criteria on which to evaluate future railroad mergers.

For virtually every business in the United States, mergers and acquisitions in excess of \$10 million are subject to Antitrust Division of the Department of Justice. Railroads, however, are treated differently. Under current law, the STB has exclusive jurisdiction over most matters concerning rail transportation including mergers and acquisitions. In exercising that authority, the STB has approved a series of mergers over the past twenty years since passage of the Staggers Act which has resulted in widespread consolidation in the rail industry. This consolidation has reduced the number of rail carriers from 40 Class I railroads to just 7, resulting in significant service disruptions, negative impacts on shippers and a reduction in competition.

Mr. Speaker, believe it or not, the railroad industry is the only industry, except for America's favorite pastime, baseball, that is almost entirely exempt from the substance of the antitrust laws. With the rail industry now consolidated to seven major railroads, and the stage set for a possible final consolidation, there is an increased potential for the rail industry to exercise market power and monopoly abuse against shippers. In order to protect shippers and promote true competition, it makes sense to treat the railroads like other industries and subject them to the jurisdiction of the Department of Justice and full application of antitrust laws.

Currently, the Department of Justice can only comment on proposed mergers. In previous mergers the recommendations of DOJ were ignored. For example the Department of Justice pegged the Union Pacific-Southern Pacific merger "the most anti-competitive rail merger in history." In that merger, the STB ignored not only the concerns expressed by Department of Justice, but also the concerns of rail customers, organized labor and the United States Department of Agriculture. I believe that the Department of Justice, an agency that can objectively evaluate the impact of mergers and protect shippers from the continual decrease in competition, needs to have a strong voice in mergers reviewed by the Surface Transportation Board.

My legislation would require both the Department of Justice and the STB to review and approve future rail mergers. Under this proposed regulatory framework, the DOJ would approve a merger unless it substantially restrains commerce in any section of the country or tends to create a monopoly in any line of commerce. The STB would still be required to review and approve a merger under a similar

EXTENSIONS OF REMARKS

standard but it would also judge the proposed merger by a broader public interest standard. However, my legislation would not allow a merger to move forward without approval from both Department of Justice and Surface Transportation Board.

Under my legislation, the STB would also be required to examine several additional criteria before approving a merger. The merger (1) cannot eliminate transportation alternatives; (2) must improve transportation alternatives; (3) must improve competition among rail carriers; (4) must improve service to customers. Additionally, the legislation ensures that relief can be sought under the current regulatory framework or through the antitrust laws.

In light of the recent decision by the Surface Transportation Board to place a 15-month moratorium on mergers and its solicitation on how merger rules can and should be revised, we have an unprecedented opportunity to reshape railroad policy for the 21st Century. In this day and age, there is no public policy reason to justify the industry's special treatment, particularly since the railroads have enjoyed considerable deregulation under both the Staggers Act and the Interstate Commerce Commission (ICC) Termination Act. The passage of these laws which reduced the scope and effectiveness of the regulatory agency, makes it more necessary than ever for shippers to have the full panoply of remedies available against monopolistic activities.

I am pleased that the Alliance for Rail Competition, the Consumers United for Rail Equity, National Farmers Union, American Farm Bureau Federation, National Association of Wheat Growers, Northern States Power, the American Forests and Paper Association and the National Association of Chemical Distributors have endorsed this legislation.

I urge my colleagues to join me in this effort to ensure that the railroad industry is subject to the same laws as every other industry. It is in the public interest to raise the bar for review of the last few remaining mergers and to have oversight by the Department of Justice of the actions of the railroads.

IN HONOR OF BOB MOLINA

HON. JOE BACA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Monday, May 22, 2000

Mr. BACA. Mr. Speaker, on Saturday, May 27th at 10 a.m. we will be dedicating the new Bob Molina Memorial Park and Fountain in Ri-alto.

Bob Molina passed away on July 7, 1998, after battling an illness. Those of us who knew him were moved by his incredible determination, positive attitude, and cheerfully optimistic disposition.

Bob distinguished himself as a member of the International Brotherhood of Teamsters for 36 years, serving as Shop Steward, Business Agent, and President, as well as on the Executive Boards, grievance committees, and negotiation teams.

He was a tenacious fighter for the members he represented; he battled for higher wages, improved pensions, and the highest quality

medical benefits; and he struggled for contract language providing for a safe workplace and decent working conditions.

As we dedicate the Park and Fountain, it is fitting to note that Bob Molina demonstrated his commitment to the community through his service as a Little League Coach, Pop Warner Coach, and Girls' Softball Coach, as well as the Cub Scouts. He also served our nation in the United States Navy.

He was a devoted husband, father, and grandfather. During his 32 year marriage, he and his wife Barbara had 9 children and 14 grandchildren.

This Park and Fountain honor Bob Molina's lifetime of service to his nation, community, cherished Teamsters Union, and beloved family. It is a symbol of his outstanding qualities that included hard work, concern, and dedication that enhanced the lives of the many people who had the pleasure of being touched by his life.

FLOYD D. SPENCE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2001

SPEECH OF

HON. TIM ROEMER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 17, 2000

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 4205) to authorize appropriations for fiscal year 2001 for military activities of the Department of Defense and for military construction, to prescribe military personnel strengths for fiscal year 2001, and for other purposes:

Mr. ROEMER. Mr. Chairman, I strongly support the Defense Authorization bill for fiscal year 2001. This legislation has placed great emphasis on expanding quality of life initiatives, addressing readiness shortfalls, and enhancing modernization programs. I am particularly supportive of the procurement budget in this legislation for the High Mobility Multipurpose Wheeled Vehicle (HMMWV) or Hummer.

The Congress and especially the Armed Services Committee have strongly supported sustained Hummer production. The hard-working people of Indiana's Third Congressional district have responded by providing a vehicle that has met, and in many cases, exceeded the needs of our brave troops in the field.

Moreover, both the Army and the Marine Corps have identified the Hummer among their unfunded modernization priorities. This defense authorization bill meets those priorities by increasing the budget by \$28 million, thereby allowing the Army and the Marines to buy more Hummers to replace their aging fleet and provide technology insertion. This will go a long way toward protecting our brave men and women in uniform deployed in Kosovo and Bosnia.

I am excited by the growing capabilities of the Hummer. Earlier this year, I went home to visit the Hummer plant and saw a prototype of the commercial Hummer II which is being developed by a joint effort between AM General and General Motors. The Hummer's expansion into the commercial marketplace will result in the sharing of leading technologies for

commercial and military vehicles while maintaining a highly skilled technological workforce in Indiana who I am very proud to represent.

Mr. Chairman, I wish to express my gratitude to the members of the Armed Services Committee who have reported a defense authorization bill that will ensure continued Hummer production. I urge my colleagues to support this legislation.

INTRODUCTION OF LEGISLATION TO PROVIDE EXTENDED PAY- MENT OF ESTATE TAX FOR ES- TATES WITH CLOSELY HELD BUSINESSES

HON. NEIL ABERCROMBIE

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

Monday, May 22, 2000

Mr. ABERCROMBIE. Mr. Speaker, Mrs. MCCARTHY from New York joins me today in introducing a bill to provide estate tax relief for closely held, family-owned businesses. Both Mrs. MCCARTHY and I support repeal of the estate tax and we have co-sponsored legislation in this Congress, H.R. 8, to effect repeal. The Ways and Means Committee will soon mark up H.R. 8 and report the measure for floor action.

The estate tax threatens the survival of family businesses. Mrs. MCCARTHY has heard this in her Small Business Committee, just as I have heard from my constituents. Economists and tax experts confirm that the estate tax creates a true impediment in passing the family business to the next generation. The Congressional Budget Resolution, however, prevents an immediate repeal of the estate tax, and the anticipated committee recommendation will provide rate reduction with a gradual, extended phase down of the tax.

I support that recommendation as do many of my colleagues. But family-owned businesses need immediate relief if they are to survive as family enterprises. Any business owner who dies during that phase-down period, will face the problem of having to sell the business to pay the tax. Active, family-owned businesses are inherently illiquid. The owners have invested most, if not all, of their assets in the business. Where a business constitutes the major part of a person's estate, the estate must sell off the business assets, or in many cases the business itself, to pay the federal estate tax within 9 months of the owner's death.

Now, sale of the business or sale of the business assets is hard to complete within 9 months. The seller is not going to get the full value of the property in a forced sale. Instead of this losing proposition, an aging parent while still living will often sell the family business even though the children want to retain the enterprise.

Even the tax scholars, who argue in favor of the estate tax, agree that family businesses face a true hardship to raise cash for the estate tax. They recommend that family businesses should have an extended period to pay off the tax so that the business will not have to be sold.

Trying to deal with this problem, Congress in 1958 and again in 1976 enacted the defer-

ral and installment payment provisions in current law. Under section 6166 of the tax code, an executor of an estate can elect to defer payment of the federal estate tax for 4 years and pay the tax in annual installments over the next 10 years. The decedent's estate must pay the Treasury a discounted rate of interest on the amount of deferred tax outstanding. The 4-year deferral and 10-year installment payment apply as to the estate tax on a closely held business.

This relief covers ownership of a sole proprietorship, a corporation, or a partnership. But the relief is restricted under an obsolete definition of eligibility. Back in 1948, the tax code defined a small business as having 10 or less shareholders or owners for Subchapter S treatment. In the estate tax area, relief was geared to the same definition under Subchapter S. In 1976, when Congress re-visited the estate tax, it extended the deferral and installment payment relief to businesses with 15 or less owners in keeping with the revised Subchapter S definition of small business. In 1996, Congress modified the definition of a small business under Subchapter S to mean a business with less than 75 owners, but Congress failed to make the comparable change in the estate tax. Consequently estate tax relief for closely held businesses is now based on an antiquated definition.

The proposal in the bill Mrs. MCCARTHY and I are introducing, raises the number of permissible shareholders and partners in a qualifying business from 15 to 75 for purposes of section 6166 relief. Again, our proposal is consistent with the definition of a small business corporation in section 1361 of the tax code. Congress, in the Small Business Jobs Protection Act of 1996, had raised the permissible number of shareholders from 35 to 75 for small business corporations under section 1361, and Congress in that same bill should have made the same change for estate tax relief back in 1996.

As I stated earlier, owners of closely held, family businesses have to sell their business to meet their estate tax liability. The proposed relief gives family-owned businesses as well as other closely held businesses, additional time to pay the tax. Business earnings could then be used to pay the decedent's estate tax liability without having to sell business assets or the business itself. The children could continue to own and run the family business. I commend this bill to my colleagues.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this infor-

mation, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Tuesday, May 23, 2000 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MAY 24

9 a.m.

Judiciary

Administrative Oversight and the Courts Subcommittee

To hold oversight hearings to examine the 1996 campaign finance investigations.

SD-226

9:30 a.m.

Energy and Natural Resources

Business meeting to consider pending calendar business.

SD-366

Environment and Public Works

To hold hearings on S. 25, to provide Coastal Impact Assistance to State and local governments, to amend the Outer Continental Shelf Lands Act Amendments of 1978, the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people; S. 2123, to provide Outer Continental Shelf Impact assistance to State and local governments, to amend the Land and Water Conservation Fund Act of 1965, the Urban Park and Recreation Recovery Act of 1978, and the Federal Aid in Wildlife Restoration Act (commonly referred to as the Pittman-Robertson Act) to establish a fund to meet the outdoor conservation and recreation needs of the American people; and S. 2181, to amend the Land and Water Conservation Fund Act to provide full funding for the Land and Water Conservation Fund, and to provide dedicated funding for other conservation programs, including coastal stewardship, wildlife habitat protection, State and local park and open space preservation, historic preservation, forestry conservation programs, and youth conservation corps; and for other purposes.

SD-406

10 a.m.

Foreign Relations

To hold hearings on the nomination of Marc Grossman, of Virginia, to be Director General of the Foreign Service, Department of State.

SD-419

Banking, Housing, and Urban Affairs

Business meeting to markup S. 2107, to amend the Securities Act of 1933 and the Securities Exchange Act of 1934 to reduce securities fees in excess of those required to fund the operations of the Securities and Exchange Commission, to adjust compensation provisions for employees of the Commission; S. 2382, to authorize appropriations for technical assistance for fiscal year 2001, to promote trade anti-corruption measures; S. 2266, to provide for the minting